

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-117-T- ORDER NO. 1999-194
MARCH 26, 1999

IN RE: Application for Transfer of Class E) ORDER APPROVING
Certificate of Public Convenience and) TRANSFER OF
Necessity No. 94B from Checker Transfer &) CERTIFICATE
Storage Co. to AmeriMove of South Carolina,)
LLC.)

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Checker Transfer & Storage Co. (“Checker” or “Transferor”) requesting approval of the transfer of its Class E Certificate of Public Convenience and Necessity. The Application reveals that Checker seeks the transfer of Class E Certificate of Public Convenience and Necessity No. 94B to AmeriMove of South Carolina, LLC (“AmeriMove” or “Transferee”). The filing was made pursuant to S.C. Code Ann. Section 58-23-340 (Supp. 1998) and the Regulations of the Commission and contains an Application for the Sale or Transfer of Certificate of Convenience and Necessity executed by Checker and AmeriMove; the Asset Purchase Agreement between Checker and AmeriMove; and the Application of AmeriMove for a Certificate of Public Convenience and Necessity. All documentation required by the Commission regulations is also included with the filing. The parties also request that the filing be considered in

the context of the Commission's regularly scheduled agenda meeting, implicitly requesting waivers of the notice and hearing requirements of the Commission.

In the request before the Commission, Checker informs the Commission that it is the holder of Certificate of Public Convenience and Necessity No. 94B. Certificate No. 94B was issued to Checker on August 3, 1955, and grants to Checker authority to furnish motor freight service over irregular routes as follows:

Household Goods as Defined in Motor Freight Tariff 8-A,
S.C.P.S.C.-MF No. 26 and Revisions thereto:
Between Points and Places in South Carolina.

SUMMARY OF APPLICABLE LAW

26 S.C. Code Reg. 103-155 (Supp. 1998) provides that "no certificate or rights thereunder shall be sold, assigned, leased, transferred, mortgaged, pledged, or hypothecated, by the sale of stock or otherwise, unless first authorized by the Commission as provided in 103-135."

26 S.C. Code Reg. 103-135 governs the sale, lease or other transfer of a certificate of Public Convenience and Necessity and provides, in relevant part, as follows:

1. Application Required. Application for approval of sale, lease or other transfer of a Certificate of PC&N or FWA shall be filed with the Commission on forms provided by the Commission. No application is deemed filed until all the required information is completed and all the appropriate signatures obtained.

....

3. Application to Sell or Otherwise Transfer a Certificate of PC&N.
 - a. If the application is for approval of a sale or other transfer of a certificate, a copy of the proposed sales or other transfer agreement must be filed with the application and must contain the entire agreement between parties, including (1) an accurate description of the operating rights and other property to be transferred, and (2) the purchase price agreed upon and all the terms and conditions with respect to the payment of the same.
 - b. No sale or other transfer of a Certificate of PC&N shall be approved by the Commission until the transferor (seller) has filed with the Commission a statement under oath showing (1) all assets of the holder of the certificate to be sold, (2) all debts and claims against the transferor (seller) of which such seller has any knowledge or notice, (3) wages due employees of the transferor (seller), (4) unremitted COD collections due shippers, (5) claims for loss of or damage to goods transported or received for transportation, (6) claims for overcharges on property transported, and (7) interline accounts due other carriers. There also shall be filed with the Commission a verified statement from the transferee (purchaser) or an authorized agent or officer thereof, guaranteeing the payment of all just obligations as listed in the sworn statement of the seller. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers, or trustees in bankruptcy under court order.
4. Proof Required. The Commission shall approve an application for lease, sale, or other transfer of a Certificate of PC&N made under this section upon finding (1) that sale, assignment, pledge, transfer, change of control, lease, merger, or combination thereof will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate or control thereof is fit, willing, and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve months prior to the date of

the filing of the application for approval of the sale, lease or transfer of said certificate, or, in lieu thereof, that any suspension of service exceeding thirty (30) days shall have been approved by the Commission, seasonal suspensions excepted. No sale, lease, transfer, assignment, or hypothecation of a Certificate of PC&N will be approved where such action would be destructive of competition or would create an unlawful monopoly. If the application does not contain evidence that the authorized services have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application, the application may be denied,

....

6. It is unlawful for any person to sell, lease, or otherwise transfer a Certificate of PC&N issued or authorized to be issued after July 1, 1983, under the provisions of Chapter 23 of Title 58 for money, goods, services, or any other thing of value. A certificate may be transferred incident to the sale or lease of property or assets owned or used by a regulated motor carrier, provided the approval of the Commission for the transfer of the certificate is first obtained and that the certificate itself is not transferred for value or utilized to enhance the value of other property transferred. Nothing herein shall affect the sale, lease, or otherwise transfer of a certificate of public convenience and necessity issued prior to July 1, 1983.

DISCUSSION

Pursuant to S.C. Code Reg. 103-135(3), the Application for transfer contains the following documentation:

1. Asset Purchase Agreement executed by the Transferor and Transferee containing the purchase price agreed upon and a description of the operating rights and other property to be transferred, and
2. a verified statement from the Transferor (Checker) that there are no debts or claims against the transferor; no unremitted COD collections due shippers; no claims for loss of or damage to goods transported or received

for transportation; no claims for overcharges on property transported; no interline accounts due other carriers; and no wages due employees of the transferor.

As required by S.C. Code Reg. 103-135(4), the application also contains documentation, in the form of bills of lading, demonstrating that the services under Certificate No. 94B have been continuously offered and provided to the public for the twelve months prior to March 11, 1999, which is the date the Application was filed with the Commission.

Also as required by S.C. Code Reg. 103-135(4), the Application for Transfer contains an application for a Certificate of Public Convenience and Necessity from the Transferee, AmeriMove. The purpose of AmeriMove filing an application for a Certificate of Public Convenience and Necessity is to provide information and documentation to establish that AmeriMove is fit, willing, and able to perform the moving services to the public as authorized by Certificate No. 94B. In considering whether AmeriMove is fit, willing, and able to perform the services under Certificate No. 94B, the Commission will use the criteria as set forth in 26 S.C. Code Reg. 103-133(1) which provides in pertinent part as follows:

...[t]he following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant and that applicant is financially fit to do business as a certified carrier. The applicant should further certify

that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agree to operate in compliance with these statutes and regulations.

- b. ABLE. The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able", the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

By the Application filed by AmeriMove, AmeriMove's representative has certified that AmeriMove has no outstanding judgments pending against it and that the representative is familiar with all statutes and regulations governing motor carrier services in South Carolina. Further, AmeriMove's representative certifies that AmeriMove agrees to operate in compliance with the statutes and regulations governing motor carrier services in South Carolina. AmeriMove also provides a description of equipment demonstrating that AmeriMove has the necessary equipment to provide the services for which AmeriMove seeks authority. AmeriMove also provides an insurance quote which indicates that AmeriMove is aware of the Commission's insurance requirements and the costs associated therewith.

Based upon the information before the Commission as contained in the Application for Transfer and the accompanying documentation, including the application

for a Certificate of Public Convenience and Necessity completed by AmeriMove, the Commission makes the following findings:

1. The services offered under Certificate No. 94B have been continuously offered to the public for the twelve months prior to the filing on the application.

A review of the documentation accompanying the Application reveals a number of bills of lading for moving services performed by Checker for the period of January 30, 1998, through February 23, 1999. These bills of lading provide sufficient evidence to demonstrate that the moving services authorized by Certificate No. 94B have been continuously offered and provided to the public for at least twelve months prior to March 11, 1999, which is the date the application was filed with the Commission.

2. The person acquiring said certificate (AmeriMove) is fit, willing, and able to perform such service to the public under said certificate.

A review of the application for a Certificate of Public Convenience and Necessity filed by AmeriMove and accompanying the Application for Transfer provides documentation for the Commission to find that AmeriMove is fit, willing, and able to provide household goods moving service in South Carolina. "Fit" is demonstrated by AmeriMove's representative certifying that there are no outstanding judgments pending against AmeriMove and that he, and thus AmeriMove, is familiar with the statutes and regulations governing motor carrier services and that he, and thus AmeriMove, agree to operate in compliance with the statutes and regulations.

"Able" is demonstrated by AmeriMove demonstrating that it has the equipment with which to provide the services for which AmeriMove seeks authority, and further

“able” is shown by evidence of insurance quotes indicating that AmeriMove is familiar with the Commission’s insurance requirements and the costs associated therewith.

“Willing” is demonstrated by the submission of the application for operating authority.

The Commission’s determination that AmeriMove is fit, willing, and able to perform the services under Certificate No. 94B conform with and meet the requirements as set forth in 26 S.C. Code Reg. 103-133 (Supp. 1998).

3. The transfer of Certificate No. 94B will not adversely affect the service to the public under Certificate No. 94B.

In Finding of Fact No. 1 above, the Commission found that the services offered under Certificate No. 94B have been continuously offered to the public for at least the twelve months prior to the filing of the Application for Transfer. In Finding of Fact No. 2 above, the Commission found that AmeriMove, the Transferee, is fit, willing, and able to perform the services authorized by Certificate No. 94B. As AmeriMove has been found to be qualified to operate as a household goods carrier in South Carolina, and as the public is presently being served by the services under Certificate No. 94B with no adverse impact, the Commission finds and concludes that the transfer of Certificate No. 94B to AmeriMove will not adversely affect the services being offered to the public under Certificate No. 94B.

IT IS THEREFORE ORDERED THAT:

1. The transfer of Certificate No. 94B from the Transferor, Checker, to the Transferee, AmeriMove is hereby approved.

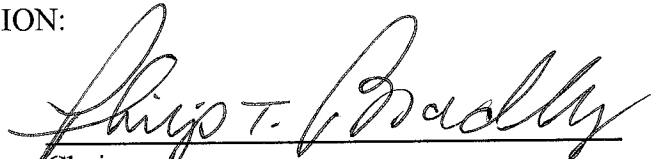
2. The Transferee shall file the proper license fees and other information as required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by 26 S.C. Code Regs. 103-100 through 103-280 (Supp. 1998), which are the Commission's Rules and Regulations for Motor Carriers, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and 26 S.C. Code Regs. 103-100 through 103-280 (Supp. 1998), which are the Commission's Rules and Regulations for Motor Carriers, a certificate shall be issued to the Transferee¹ authorizing the motor carrier services granted herein.

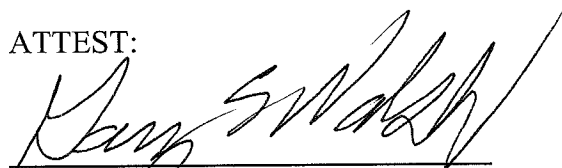
4. Prior to compliance with the requirements stated above and receipt of a certificate, the motor carrier services authorized herein shall not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

¹ By its application, AmeriMove indicates that it will be conducting business as AmeriMove of South Carolina, LLC d/b/a Checker AmeriMove. Therefore, when the actual certificate is issued to AmeriMove, the name on the certificate should read "AmeriMove of South Carolina, LLC d/b/a Checker AmeriMove."